

CHAMBER ACTION

1 The Economic Development, Trade & Banking Committee recommends
2 the following:

3
4 **Council/Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to community associations; creating s.
8 712.11, F.S.; providing for the revival of certain
9 covenants that have lapsed; amending s. 718.106, F.S.;
10 prohibiting local ordinances that limit the access of
11 certain persons to beaches that adjoin condominiums;
12 amending s. 718.110, F.S.; revising provisions relating to
13 the amendment of declarations; providing legislative
14 findings and a finding of compelling state interest;
15 providing criteria for consent to an amendment; requiring
16 notice regarding proposed amendments to mortgagees;
17 providing criteria for notification; providing for voiding
18 certain amendments; amending s. 718.112, F.S.; revising
19 the implementation date for retrofitting of common areas
20 with a sprinkler system; amending s. 718.114, F.S.;
21 providing that certain leaseholds, memberships, or other
22 possessory or use interests shall be considered a material
23 alteration or substantial addition to certain real

24 | property; amending s. 718.404, F.S.; providing retroactive
25 | application of provisions relating to mixed-use
26 | condominiums; amending s. 719.103, F.S.; providing a
27 | definition; amending s. 719.507, F.S.; prohibiting laws,
28 | ordinances, or regulations that apply only to improvements
29 | that are or may be subjected to an equity club form of
30 | ownership; amending s. 720.302, F.S.; revising governing
31 | provisions relating to corporations that operate
32 | residential homeowners' associations; amending s. 720.303,
33 | F.S.; revising application to include certain meetings;
34 | requiring the association to provide certain information
35 | to prospective purchasers or lienholders; authorizing the
36 | association to charge a reasonable fee for providing
37 | certain information; requiring the budget to provide for
38 | annual operating expenses; authorizing the budget to
39 | include reserve accounts for capital expenditures and
40 | deferred maintenance; providing a formula for calculating
41 | the amount to be reserved; authorizing the association to
42 | adjust replacement reserve assessments annually;
43 | authorizing the developer to vote to waive the reserves or
44 | reduce the funding of reserves for a certain period;
45 | revising provisions relating to financial reporting;
46 | revising time periods in which the association must
47 | complete its reporting; repealing s. 720.303(2), F.S., as
48 | amended, relating to board meetings, to remove conflicting
49 | versions of that subsection; creating s. 720.3035, F.S.;
50 | providing for architectural control covenants and parcel
51 | owner improvements; authorizing the review and approval of

HB 839 CS

2006
CS

52 | plans and specifications; providing limitations; providing
53 | rights and privileges for parcel owners as set forth in
54 | the declaration of covenants; amending s. 720.305, F.S.;
55 | providing that, where a member is entitled to collect
56 | attorney's fees against the association, the member may
57 | also recover additional amounts as determined by the
58 | court; amending s. 720.306, F.S.; providing that certain
59 | mergers or consolidations of an association shall not be
60 | considered a material or adverse alteration of the
61 | proportionate voting interest appurtenant to a parcel;
62 | amending s. 720.307, F.S.; requiring developers to deliver
63 | financial records to the board in any transition of
64 | association control to members; requiring certain
65 | information to be included in the records and for the
66 | records to be prepared in a specified manner; amending s.
67 | 720.308, F.S.; providing circumstances under which a
68 | guarantee of common expenses shall be effective; providing
69 | for approval of the guarantee by association members;
70 | providing for a guarantee period and extension thereof;
71 | requiring the stated dollar amount of the guarantee to be
72 | an exact dollar amount for each parcel identified in the
73 | declaration; providing payments required from the
74 | guarantor to be determined in a certain manner; providing
75 | a formula to determine the guarantor's total financial
76 | obligation to the association; providing that certain
77 | expenses incurred in the production of certain revenues
78 | shall not be included in the operating expenses; amending
79 | s. 720.311, F.S.; revising provisions relating to dispute

Page 3 of 45

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0839-03-c3

HB 839 CS

2006
CS

80 resolution; providing that the filing of any petition for
81 arbitration or the serving of an offer for presuit
82 mediation shall toll the applicable statute of
83 limitations; providing that certain disputes between an
84 association and a parcel owner shall be subject to presuit
85 mediation; revising provisions to conform; providing that
86 temporary injunctive relief may be sought in certain
87 disputes subject to presuit mediation; authorizing the
88 court to refer the parties to mediation under certain
89 circumstances; requiring the aggrieved party to serve on
90 the responding party a written offer to participate in
91 presuit mediation; providing a form for such offer;
92 providing that service of the offer is effected by the
93 sending of such an offer in a certain manner; providing
94 that the prevailing party in any subsequent arbitration or
95 litigation proceedings is entitled to seek recovery of all
96 costs and attorney's fees incurred in the presuit
97 mediation process; requiring the mediator or arbitrator to
98 meet certain certification requirements; removing a
99 requirement relating to development of an education
100 program to increase awareness of the operation of
101 homeowners' associations and the use of alternative
102 dispute resolution techniques; providing effective dates.

103
104 Be It Enacted by the Legislature of the State of Florida:

105
106 Section 1. Section 712.11, Florida Statutes, is created to
107 read:

HB 839 CS

2006
CS

108 712.11 Covenant revitalization.--A homeowners' association
 109 not otherwise subject to chapter 720 may use the procedures set
 110 forth in ss. 720.403-720.407 to revive covenants that have
 111 lapsed under the terms of this chapter.

112 Section 2. Subsection (5) is added to section 718.106,
 113 Florida Statutes, to read:

114 718.106 Condominium parcels; appurtenances; possession and
 115 enjoyment.--

116 (5) A local ordinance or regulation may not establish any
 117 limitation on the ability of unit owners or an association to
 118 permit guests, licensees, members, or invitees to use or access
 119 their units or common elements for the purpose of accessing a
 120 public beach or private beach adjacent to the condominium.

121 Section 3. Effective October 1, 2006, subsection (11) of
 122 section 718.110, Florida Statutes, is amended to read:

123 718.110 Amendment of declaration; correction of error or
 124 omission in declaration by circuit court.--

125 (11) The Legislature finds that the procurement of
 126 mortgagee consent to amendments that do not affect the rights or
 127 interests of mortgagees is an unreasonable and substantial
 128 logistical and financial burden on the unit owners and that
 129 there is a compelling state interest in enabling the members of
 130 a condominium association to approve amendments to the
 131 condominium documents through legal means. Accordingly, and
 132 notwithstanding any provision to the contrary contained in this
 133 section;

134 (a) As to any mortgage recorded on or after October 1,
 135 2006, any provision in the declaration, articles of

HB 839 CS

2006
CS

136 incorporation, or bylaws that requires recorded after April 1,
137 ~~1992, may not require~~ the consent or joinder of some or all
138 mortgagees of units or any other portion of the condominium
139 property to or in amendments to the declaration, articles of
140 incorporation, or bylaws or for any other matter shall be
141 enforceable only as to the following matters: unless the
142 ~~requirement is limited to amendments materially affecting the~~
143 ~~rights or interests of the mortgagees, or as otherwise required~~
144 ~~by the Federal National Mortgage Association or the Federal Home~~
145 ~~Loan Mortgage Corporation, and unless the requirement provides~~
146 ~~that such consent may not be unreasonably withheld. It shall be~~
147 ~~presumed that, except as to~~

148 1. Those matters described in subsections (4) and (8).
149 2. Amendments to the declaration, articles of
150 incorporation, or bylaws that adversely affect the priority of
151 the mortgagee's lien or the mortgagee's rights to foreclose its
152 lien or that otherwise materially affect the rights and
153 interests of the mortgagees.

154 (b) As to mortgages recorded before October 1, 2006, any
155 existing provisions in the declaration, articles of
156 incorporation, or bylaws requiring mortgagee consent shall be
157 enforceable.

158 (c) In securing consent or joinder, the association shall
159 be entitled to rely upon the public records to identify the
160 holders of outstanding mortgages. The association may use the
161 address provided in the original recorded mortgage document,
162 unless there is a different address for the holder of the
163 mortgage in a recorded assignment or modification of the

HB 839 CS

2006
CS

164 mortgage, which recorded assignment or modification must
165 reference the official records book and page on which the
166 original mortgage was recorded. Once the association has
167 identified the recorded mortgages of record, the association
168 shall, in writing, request of each unit owner whose unit is
169 encumbered by a mortgage of record any information the owner has
170 in his or her possession regarding the name and address of the
171 person to whom mortgage payments are currently being made.
172 Notice shall be sent to such person if the address provided in
173 the original recorded mortgage document is different from the
174 name and address of the mortgagee or assignee of the mortgage as
175 shown by the public record. The association shall be deemed to
176 have complied with this requirement by making the written
177 request of the unit owners required under this paragraph. Any
178 notices required to be sent to the mortgagees under this
179 paragraph shall be sent to all available addresses provided to
180 the association.

181 (d) Any notice to the mortgagees required under paragraph
182 (c) may be sent by a method that establishes proof of delivery,
183 and any mortgagee who fails to respond within 60 days after the
184 date of mailing shall be deemed to have consented to the
185 amendment.

186 (e) For those amendments requiring mortgagee consent on or
187 after October 1, 2006, ~~do not materially affect the rights or~~
188 ~~interests of mortgagees.~~ in the event mortgagee consent is
189 provided other than by properly recorded joinder, such consent
190 shall be evidenced by affidavit of the association recorded in
191 the public records of the county where the declaration is

192 | recorded. Any amendment adopted without the required consent of
 193 | a mortgagee shall be voidable only by a mortgagee who was
 194 | entitled to notice and an opportunity to consent. An action to
 195 | void an amendment shall be subject to the statute of limitations
 196 | beginning 5 years from the date of discovery as to the
 197 | amendments described in subparagraph (a)2. and 5 years from the
 198 | date of recordation of the certificate of amendment for all
 199 | other amendments. This provision shall apply to all mortgages,
 200 | regardless of the date of recordation of the mortgage.

201 | Section 4. Paragraph (1) of subsection (2) of section
 202 | 718.112, Florida Statutes, is amended to read:

203 | 718.112 Bylaws.--

204 | (2) REQUIRED PROVISIONS.--The bylaws shall provide for the
 205 | following and, if they do not do so, shall be deemed to include
 206 | the following:

207 | (1) Certificate of compliance.--There shall be a provision
 208 | that a certificate of compliance from a licensed electrical
 209 | contractor or electrician may be accepted by the association's
 210 | board as evidence of compliance of the condominium units with
 211 | the applicable fire and life safety code. Notwithstanding the
 212 | provisions of chapter 633 or of any other code, statute,
 213 | ordinance, administrative rule, or regulation, or any
 214 | interpretation of the foregoing, an association, condominium, or
 215 | unit owner is not obligated to retrofit the common elements or
 216 | units of a residential condominium with a fire sprinkler system
 217 | or other engineered lifesafety system in a building that has
 218 | been certified for occupancy by the applicable governmental
 219 | entity, if the unit owners have voted to forego such

HB 839 CS

2006
CS

220 retrofitting and engineered lifesafety system by the affirmative
221 vote of two-thirds of all voting interests in the affected
222 condominium. However, a condominium association may not vote to
223 forego the retrofitting with a fire sprinkler system of common
224 areas in a high-rise building. For purposes of this subsection,
225 the term "high-rise building" means a building that is greater
226 than 75 feet in height where the building height is measured
227 from the lowest level of fire department access to the floor of
228 the highest occupiable story. For purposes of this subsection,
229 the term "common areas" means any enclosed hallway, corridor,
230 lobby, stairwell, or entryway. In no event shall the local
231 authority having jurisdiction require completion of retrofitting
232 of common areas with a sprinkler system before the end of 2025
233 ~~2014~~.

234 1. A vote to forego retrofitting may be obtained by
235 limited proxy or by a ballot personally cast at a duly called
236 membership meeting, or by execution of a written consent by the
237 member, and shall be effective upon the recording of a
238 certificate attesting to such vote in the public records of the
239 county where the condominium is located. The association shall
240 mail, hand deliver, or electronically transmit to each unit
241 owner written notice at least 14 days prior to such membership
242 meeting in which the vote to forego retrofitting of the required
243 fire sprinkler system is to take place. Within 30 days after the
244 association's opt-out vote, notice of the results of the opt-out
245 vote shall be mailed, hand delivered, or electronically
246 transmitted to all unit owners. Evidence of compliance with this
247 30-day notice shall be made by an affidavit executed by the

Page 9 of 45

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0839-03-c3

HB 839 CS

2006
CS

248 | person providing the notice and filed among the official records
 249 | of the association. After such notice is provided to each owner,
 250 | a copy of such notice shall be provided by the current owner to
 251 | a new owner prior to closing and shall be provided by a unit
 252 | owner to a renter prior to signing a lease.

253 | 2. As part of the information collected annually from
 254 | condominiums, the division shall require condominium
 255 | associations to report the membership vote and recording of a
 256 | certificate under this subsection and, if retrofitting has been
 257 | undertaken, the per-unit cost of such work. The division shall
 258 | annually report to the Division of State Fire Marshal of the
 259 | Department of Financial Services the number of condominiums that
 260 | have elected to forego retrofitting.

261 | Section 5. Section 718.114, Florida Statutes, is amended
 262 | to read:

263 | 718.114 Association powers.--An association has the power
 264 | to enter into agreements, to acquire leaseholds, memberships,
 265 | and other possessory or use interests in lands or facilities
 266 | such as country clubs, golf courses, marinas, and other
 267 | recreational facilities. It has this power whether or not the
 268 | lands or facilities are contiguous to the lands of the
 269 | condominium, if they are intended to provide enjoyment,
 270 | recreation, or other use or benefit to the unit owners. All of
 271 | these leaseholds, memberships, and other possessory or use
 272 | interests existing or created at the time of recording the
 273 | declaration must be stated and fully described in the
 274 | declaration. Subsequent to the recording of the declaration,
 275 | agreements acquiring these leaseholds, memberships, or other

HB 839 CS

2006
CS

276 possessory or use interests not entered into within 12 months
277 following the recording of the declaration shall be considered a
278 material alteration or substantial addition to the real property
279 that is association property, and the association may not
280 acquire or enter into agreements acquiring these leaseholds,
281 memberships, or other possessory or use interests except as
282 authorized by the declaration as provided in s. 718.113. The
283 declaration may provide that the rental, membership fees,
284 operations, replacements, and other expenses are common expenses
285 and may impose covenants and restrictions concerning their use
286 and may contain other provisions not inconsistent with this
287 chapter. A condominium association may conduct bingo games as
288 provided in s. 849.0931.

289 Section 6. Subsections (1) and (2) of section 718.404,
290 Florida Statutes, are amended to read:

291 718.404 Mixed-use condominiums.--When a condominium
292 consists of both residential and commercial units, the following
293 provisions shall apply:

294 (1) The condominium documents shall not provide that the
295 owner of any commercial unit shall have the authority to veto
296 amendments to the declaration, articles of incorporation,
297 bylaws, or rules or regulations of the association. This
298 subsection shall apply retroactively as a remedial measure.

299 (2) Subject to s. 718.301, where the number of residential
300 units in the condominium equals or exceeds 50 percent of the
301 total units operated by the association, owners of the
302 residential units shall be entitled to vote for a majority of

HB 839 CS

2006
CS

303 | the seats on the board of administration. This subsection shall
304 | apply retroactively as a remedial measure.

305 | Section 7. Subsections (18) through (27) of section
306 | 719.103, Florida Statutes, are renumbered as subsections (19)
307 | through (28), respectively, and a new subsection (18) is added
308 | to that section to read:

309 | 719.103 Definitions.--As used in this chapter:

310 | (18) "Equity facilities club" means a club comprised of
311 | recreational facilities in which proprietary membership
312 | interests are sold to individuals, which membership interests
313 | entitle the individuals to use certain physical facilities owned
314 | by the equity club. Such physical facilities do not include a
315 | residential unit or accommodation. For purposes of this
316 | definition, the term "accommodation" shall include, but is not
317 | limited to, any apartment, residential cooperative unit,
318 | residential condominium unit, cabin, lodge, hotel or motel room,
319 | or any other accommodation designed for overnight occupancy for
320 | one or more individuals.

321 | Section 8. Section 719.507, Florida Statutes, is amended
322 | to read:

323 | 719.507 Zoning and building laws, ordinances, and
324 | regulations.--All laws, ordinances, and regulations concerning
325 | buildings or zoning shall be construed and applied with
326 | reference to the nature and use of such property, without regard
327 | to the form of ownership. No law, ordinance, or regulation shall
328 | establish any requirement concerning the use, location,
329 | placement, or construction of buildings or other improvements
330 | which are, or may thereafter be, subjected to the cooperative or

HB 839 CS

2006
CS

331 equity facilities club form of ownership, unless such
332 requirement shall be equally applicable to all buildings and
333 improvements of the same kind not then, or thereafter to be,
334 subjected to the cooperative or equity facilities club form of
335 ownership. This section does not apply if the owner in fee of
336 any land enters into and records a covenant that existing
337 improvements or improvements to be constructed shall not be
338 converted to the cooperative form of residential ownership prior
339 to 5 years after the later of the date of the covenant or
340 completion date of the improvements. Such covenant shall be
341 entered into with the governing body of the municipality in
342 which the land is located or, if the land is not located in a
343 municipality, with the governing body of the county in which the
344 land is located.

345 Section 9. Subsections (4) and (5) of section 720.302,
346 Florida Statutes, are amended to read:

347 720.302 Purposes, scope, and application.--

348 (4) This chapter does not apply to any association that is
349 subject to regulation under chapter 718, chapter 719, or chapter
350 721~~+~~ or to any nonmandatory association formed under chapter
351 723, except to the extent that a provision of chapter 718,
352 chapter 719, or chapter 721 is expressly incorporated into this
353 chapter for the purpose of regulating homeowners' associations.

354 (5) Unless expressly stated to the contrary, corporations
355 ~~not for profit~~ that operate residential homeowners' associations
356 in this state shall be governed by and subject to chapter 607,
357 if the association was incorporated under that chapter, or to
358 chapter 617, if the association was incorporated under that

HB 839 CS

2006
CS

359 | chapter, and this chapter. This subsection is intended to
360 | clarify existing law.

361 | Section 10. Paragraph (a) of subsection (2), subsection
362 | (6), and subsection (7) of section 720.303, Florida Statutes, as
363 | amended by section 18 of chapter 2004-345 and section 135 of
364 | chapter 2005-2, Laws of Florida, are amended, and paragraph (d)
365 | is added to subsection (5) of that section, to read:

366 | 720.303 Association powers and duties; meetings of board;
367 | official records; budgets; financial reporting; association
368 | funds; recalls.--

369 | (2) BOARD MEETINGS.--

370 | (a) A meeting of the board of directors of an association
371 | occurs whenever a quorum of the board gathers to conduct
372 | association business. All meetings of the board must be open to
373 | all members except for meetings between the board and its
374 | attorney with respect to proposed or pending litigation where
375 | the contents of the discussion would otherwise be governed by
376 | the attorney-client privilege. The provisions of this subsection
377 | shall also apply to the meetings of any committee or other
378 | similar body when a final decision will be made regarding the
379 | expenditure of association funds and to meetings of any body
380 | vested with the power to approve or disapprove architectural
381 | decisions with respect to a specific parcel of residential
382 | property owned by a member of the community.

383 | (5) INSPECTION AND COPYING OF RECORDS.--The official
384 | records shall be maintained within the state and must be open to
385 | inspection and available for photocopying by members or their
386 | authorized agents at reasonable times and places within 10

HB 839 CS

2006
CS

387 business days after receipt of a written request for access.
388 This subsection may be complied with by having a copy of the
389 official records available for inspection or copying in the
390 community. If the association has a photocopy machine available
391 where the records are maintained, it must provide parcel owners
392 with copies on request during the inspection if the entire
393 request is limited to no more than 25 pages.

394 (d) The association or its authorized agent is not
395 required to provide a prospective purchaser or lienholder with
396 information about the residential subdivision or the association
397 other than information or documents required by this chapter to
398 be made available or disclosed. The association or its
399 authorized agent may charge a reasonable fee to the prospective
400 purchaser or lienholder or the current parcel owner or member
401 for providing good faith responses to requests for information
402 by or on behalf of a prospective purchaser or lienholder, other
403 than that required by law, if the fee does not exceed \$150 plus
404 the reasonable cost of photocopying and any attorney's fees
405 incurred by the association in connection with the response.

406 (6) BUDGETS.--

407 (a) The association shall prepare an annual budget that
408 sets out the annual operating expenses. The budget must reflect
409 the estimated revenues and expenses for that year and the
410 estimated surplus or deficit as of the end of the current year.
411 The budget must set out separately all fees or charges paid for
412 by the association for recreational amenities, whether owned by
413 the association, the developer, or another person. The
414 association shall provide each member with a copy of the annual

HB 839 CS

2006
CS

415 budget or a written notice that a copy of the budget is
416 available upon request at no charge to the member. The copy must
417 be provided to the member within the time limits set forth in
418 subsection (5).

419 (b) In addition to annual operating expenses, the budget
420 may include reserve accounts for capital expenditures and
421 deferred maintenance for which the association is responsible to
422 the extent that the governing documents do not limit increases
423 in assessments, including reserves. If the budget of the
424 association includes reserve accounts, such reserves shall be
425 determined, maintained, and waived in the manner provided in
426 this subsection. Once an association provides for reserve
427 accounts in the budget, the association shall thereafter
428 determine, maintain, and waive reserves in compliance with the
429 provisions of this subsection.

430 (c) If the budget of the association does not provide for
431 reserve accounts governed by this subsection and the association
432 is responsible for the repair and maintenance of capital
433 improvements that may result in a special assessment if reserves
434 are not provided, each financial report for the preceding fiscal
435 year required by subsection (7) shall contain the following
436 statement in conspicuous type: THE BUDGET OF THE ASSOCIATION
437 DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES
438 AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS.
439 OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO THE
440 PROVISIONS OF SECTION 720.303(6), FLORIDA STATUTES, UPON THE
441 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
442 INTERESTS OF THE ASSOCIATION.

Page 16 of 45

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0839-03-c3

HB 839 CS

2006
CS

443 (d) An association shall be deemed to have provided for
444 reserve accounts when reserve accounts have been initially
445 established by the developer or when the membership of the
446 association affirmatively elects to provide for reserves. If
447 reserve accounts are not initially provided for by the
448 developer, the membership of the association may elect to do so
449 upon the affirmative approval of not less than a majority of the
450 total voting interests of the association. Such approval may be
451 attained by vote of the members at a duly called meeting of the
452 membership or upon a written consent executed by not less than a
453 majority of the total voting interests in the community. The
454 approval action of the membership shall state that reserve
455 accounts shall be provided for in the budget and designate the
456 components for which the reserve accounts are to be established.
457 Upon approval by the membership, the board of directors shall
458 provide for the required reserve accounts for inclusion in the
459 budget in the next fiscal year following the approval and in
460 each year thereafter. Once established as provided in this
461 subsection, the reserve accounts shall be funded or maintained
462 or shall have their funding waived in the manner provided in
463 paragraph (f).

464 (e) The amount to be reserved in any account established
465 shall be computed by means of a formula that is based upon
466 estimated remaining useful life and estimated replacement cost
467 or deferred maintenance expense of each reserve item. The
468 association may adjust replacement reserve assessments annually
469 to take into account any changes in estimates of cost or useful
470 life of a reserve item.

471 (f) Once a reserve account or reserve accounts are
472 established, the membership of the association, upon a majority
473 vote at a meeting at which a quorum is present, may provide for
474 no reserves or less reserves than required by this section. If a
475 meeting of the unit owners has been called to determine whether
476 to waive or reduce the funding of reserves and no such result is
477 achieved or a quorum is not present, the reserves as included in
478 the budget shall go into effect. After the turnover, the
479 developer may vote its voting interest to waive or reduce the
480 funding of reserves. Any vote taken pursuant to this subsection
481 to waive or reduce reserves shall be applicable only to one
482 budget year.

483 (g) Funding formulas for reserves authorized by this
484 section shall be based on either a separate analysis of each of
485 the required assets or a pooled analysis of two or more of the
486 required assets.

487 1. If the association maintains separate reserve accounts
488 for each of the required assets, the amount of the contribution
489 to each reserve account shall be the sum of the following two
490 calculations:

491 a. The total amount necessary, if any, to bring a negative
492 component balance to zero.

493 b. The total estimated deferred maintenance expense or
494 estimated replacement cost of the reserve component less the
495 estimated balance of the reserve component as of the beginning
496 of the period for which the budget will be in effect. The
497 remainder, if greater than zero, shall be divided by the
498 estimated remaining useful life of the component.

HB 839 CS

2006
CS

499
500 The formula may be adjusted each year for changes in estimates
501 and deferred maintenance performed during the year and may
502 include factors such as inflation and earnings on invested
503 funds.

504 2. If the association maintains a pooled account of two or
505 more of the required reserve assets, the amount of the
506 contribution to the pooled reserve account as disclosed on the
507 proposed budget shall not be less than that required to ensure
508 that the balance on hand at the beginning of the period for
509 which the budget will go into effect plus the projected annual
510 cash inflows over the remaining estimated useful life of all of
511 the assets that make up the reserve pool are equal to or greater
512 than the projected annual cash outflows over the remaining
513 estimated useful lives of all of the assets that make up the
514 reserve pool, based on the current reserve analysis. The
515 projected annual cash inflows may include estimated earnings
516 from investment of principal. The reserve funding formula shall
517 not include any type of balloon payments.

518 (h) Reserve funds and any interest accruing thereon shall
519 remain in the reserve account or accounts and shall be used only
520 for authorized reserve expenditures unless their use for other
521 purposes is approved in advance by a majority vote at a meeting
522 at which a quorum is present. Prior to turnover of control of an
523 association by a developer to parcel owners, the developer-
524 controlled association shall not vote to use reserves for
525 purposes other than those for which they were intended without
526 the approval of a majority of all nondeveloper voting interests

HB 839 CS

2006
CS

527 voting in person or by limited proxy at a duly called meeting of
528 the association.

529 (7) FINANCIAL REPORTING.--Within 90 days after the end of
530 the fiscal year, or annually on the date provided in the bylaws,
531 the association shall prepare and complete, or contract with a
532 third party for the preparation and completion of, a financial
533 report for the preceding fiscal year. Within 21 days after the
534 final financial report is completed by the association or
535 received from the third party, but not later than 120 days after
536 the end of the fiscal year or other date as provided in the
537 bylaws, the association shall ~~prepare an annual financial report~~
538 ~~within 60 days after the close of the fiscal year. The~~
539 ~~association shall,--~~within the time limits set forth in
540 subsection (5), provide each member with a copy of the annual
541 financial report or a written notice that a copy of the
542 financial report is available upon request at no charge to the
543 member. Financial reports shall be prepared as follows:

544 (a) An association that meets the criteria of this
545 paragraph shall prepare or cause to be prepared a complete set
546 of financial statements in accordance with generally accepted
547 accounting principles as adopted by the Board of Accountancy.
548 The financial statements shall be based upon the association's
549 total annual revenues, as follows:

550 1. An association with total annual revenues of \$100,000
551 or more, but less than \$200,000, shall prepare compiled
552 financial statements.

HB 839 CS

2006
CS

553 2. An association with total annual revenues of at least
554 \$200,000, but less than \$400,000, shall prepare reviewed
555 financial statements.

556 3. An association with total annual revenues of \$400,000
557 or more shall prepare audited financial statements.

558 (b)1. An association with total annual revenues of less
559 than \$100,000 shall prepare a report of cash receipts and
560 expenditures.

561 2. An association in a community of fewer than 50 parcels,
562 regardless of the association's annual revenues, may prepare a
563 report of cash receipts and expenditures in lieu of financial
564 statements required by paragraph (a) unless the governing
565 documents provide otherwise.

566 3. A report of cash receipts and disbursement must
567 disclose the amount of receipts by accounts and receipt
568 classifications and the amount of expenses by accounts and
569 expense classifications, including, but not limited to, the
570 following, as applicable: costs for security, professional, and
571 management fees and expenses; taxes; costs for recreation
572 facilities; expenses for refuse collection and utility services;
573 expenses for lawn care; costs for building maintenance and
574 repair; insurance costs; administration and salary expenses; and
575 reserves if maintained by the association.

576 (c) If 20 percent of the parcel owners petition the board
577 for a level of financial reporting higher than that required by
578 this section, the association shall duly notice and hold a
579 meeting of members within 30 days of receipt of the petition for
580 the purpose of voting on raising the level of reporting for that

HB 839 CS

2006
CS

581 | fiscal year. Upon approval of a majority of the total voting
582 | interests of the parcel owners, the association shall prepare or
583 | cause to be prepared, shall amend the budget or adopt a special
584 | assessment to pay for the financial report regardless of any
585 | provision to the contrary in the governing documents, and shall
586 | provide within 90 days of the meeting or the end of the fiscal
587 | year, whichever occurs later:

588 | 1. Compiled, reviewed, or audited financial statements, if
589 | the association is otherwise required to prepare a report of
590 | cash receipts and expenditures;

591 | 2. Reviewed or audited financial statements, if the
592 | association is otherwise required to prepare compiled financial
593 | statements; or

594 | 3. Audited financial statements if the association is
595 | otherwise required to prepare reviewed financial statements.

596 | (d) If approved by a majority of the voting interests
597 | present at a properly called meeting of the association, an
598 | association may prepare or cause to be prepared:

599 | 1. A report of cash receipts and expenditures in lieu of a
600 | compiled, reviewed, or audited financial statement;

601 | 2. A report of cash receipts and expenditures or a
602 | compiled financial statement in lieu of a reviewed or audited
603 | financial statement; or

604 | 3. A report of cash receipts and expenditures, a compiled
605 | financial statement, or a reviewed financial statement in lieu
606 | of an audited financial statement.

607 Section 11. Subsection (2) of section 720.303, Florida
 608 Statutes, as amended by section 2 of chapter 2004-345 and
 609 section 15 of chapter 2004-353, Laws of Florida, is repealed.

610 Section 12. Section 720.3035, Florida Statutes, is created
 611 to read:

612 720.3035 Architectural control covenants; parcel owner
 613 improvements; rights and privileges.--

614 (1) The authority of an association or any architectural,
 615 construction improvement, or other such similar committee of an
 616 association to review and approve plans and specifications for
 617 the location, size, type, or appearance of any structure or
 618 other improvement on a parcel, or to enforce standards for the
 619 external appearance of any structure or improvement located on a
 620 parcel, shall only be permitted to the extent that the authority
 621 is specifically stated or reasonably inferred as to such
 622 location, size, type, or appearance in the declaration of
 623 covenants or other published guidelines and standards authorized
 624 by the declaration of covenants.

625 (2) If the declaration of covenants or other published
 626 guidelines and standards authorized by the declaration of
 627 covenants provides options for the use of material, the size of
 628 the structure or improvement, the design of the structure or
 629 improvement, or the location of the structure or improvement on
 630 the parcel, neither the association nor any architectural,
 631 construction improvement, or other such similar committee of the
 632 association shall restrict the right of a parcel owner to select
 633 from the options provided in the declaration of covenants or

HB 839 CS

2006
CS

634 other published guidelines and standards authorized by the
635 declaration of covenants.

636 (3) Unless otherwise specifically stated in the
637 declaration of covenants or other published guidelines and
638 standards authorized by the declaration of covenants, each
639 parcel shall be deemed to have only one front for purposes of
640 determining the required front setback even if the parcel is
641 bounded by a roadway or other easement on more than one side.
642 When the declaration of covenants or other published guidelines
643 and standards authorized by the declaration of covenants do not
644 provide for specific setback limitations, the applicable county
645 or municipal setback limitations shall apply, and neither the
646 association nor any architectural, construction improvement, or
647 other such similar committee of the association shall enforce or
648 attempt to enforce any setback limitation that is inconsistent
649 with the applicable county or municipal standard or standards.

650 (4) Each parcel owner shall be entitled to the rights and
651 privileges set forth in the declaration of covenants or other
652 published guidelines and standards authorized by the declaration
653 of covenants concerning the use of the parcel, and the
654 construction of permitted structures and improvements on the
655 parcel and such rights and privileges shall not be unreasonably
656 infringed upon or impaired by the association or any
657 architectural, construction improvement, or other such similar
658 committee of the association. If the association or any
659 architectural, construction improvement, or other such similar
660 committee of the association should knowingly and willfully
661 infringe upon or impair the rights and privileges set forth in

HB 839 CS

2006
CS

662 the declaration of covenants or other published guidelines and
663 standards authorized by the declaration of covenants, the
664 adversely affected parcel owner shall be entitled to recover
665 damages caused by such infringement or impairment, including any
666 costs and reasonable attorney's fees incurred in preserving or
667 restoring the rights and privileges of the parcel owner set
668 forth in the declaration of covenants or other published
669 guidelines and standards authorized by the declaration of
670 covenants.

671 (5) Neither the association nor any architectural,
672 construction improvement, or other such similar committee of the
673 association shall enforce any policy or restriction that is
674 inconsistent with the rights and privileges of a parcel owner
675 set forth in the declaration of covenants or other published
676 guidelines and standards authorized by the declaration of
677 covenants, whether uniformly applied or not. Neither the
678 association nor any architectural, construction improvement, or
679 other such similar committee of the association may rely upon a
680 policy or restriction that is inconsistent with the declaration
681 of covenants or other published guidelines and standards
682 authorized by the declaration of covenants, whether uniformly
683 applied or not, in defense of any action taken in the name of or
684 on behalf of the association against a parcel owner.

685 Section 13. Subsection (1) of section 720.305, Florida
686 Statutes, is amended to read:

687 720.305 Obligations of members; remedies at law or in
688 equity; levy of fines and suspension of use rights; failure to
689 fill sufficient number of vacancies on board of directors to

HB 839 CS

2006
CS

690 constitute a quorum; appointment of receiver upon petition of
691 any member.--

692 (1) Each member and the member's tenants, guests, and
693 invitees, and each association, are governed by, and must comply
694 with, this chapter, the governing documents of the community,
695 and the rules of the association. Actions at law or in equity,
696 or both, to redress alleged failure or refusal to comply with
697 these provisions may be brought by the association or by any
698 member against:

699 (a) The association;

700 (b) A member;

701 (c) Any director or officer of an association who
702 willfully and knowingly fails to comply with these provisions;
703 and

704 (d) Any tenants, guests, or invitees occupying a parcel or
705 using the common areas.

706
707 The prevailing party in any such litigation is entitled to
708 recover reasonable attorney's fees and costs. A member
709 prevailing in an action between the association and the member
710 under this section, in addition to recovering his or her
711 reasonable attorney's fees, may recover additional amounts as
712 determined by the court to be necessary to reimburse the member
713 for his or her share of assessments levied by the association to
714 fund its expenses of the litigation. This relief does not
715 exclude other remedies provided by law. This section does not
716 deprive any person of any other available right or remedy.

HB 839 CS

2006
CS

717 Section 14. Paragraph (c) of subsection (1) of section
718 720.306, Florida Statutes, is amended to read:

719 720.306 Meetings of members; voting and election
720 procedures; amendments.--

721 (1) QUORUM; AMENDMENTS.--

722 (c) Unless otherwise provided in the governing documents
723 as originally recorded or permitted by this chapter or chapter
724 617, an amendment may not materially and adversely alter the
725 proportionate voting interest appurtenant to a parcel or
726 increase the proportion or percentage by which a parcel shares
727 in the common expenses of the association unless the record
728 parcel owner and all record owners of liens on the parcels join
729 in the execution of the amendment. For purposes of this section,
730 a change in quorum requirements is not an alteration of voting
731 interests. The merger or consolidation of one or more
732 associations under a plan of merger or consolidation under
733 chapter 607 or chapter 617 shall not be considered a material or
734 adverse alteration of the proportionate voting interest
735 appurtenant to a parcel.

736 Section 15. Paragraph (t) is added to subsection (3) of
737 section 720.307, Florida Statutes, to read:

738 720.307 Transition of association control in a
739 community.--With respect to homeowners' associations:

740 (3) At the time the members are entitled to elect at least
741 a majority of the board of directors of the homeowners'
742 association, the developer shall, at the developer's expense,
743 within no more than 90 days deliver the following documents to
744 the board:

HB 839 CS

2006
CS

745 (t) The financial records, including financial statements
746 of the association, and source documents from the incorporation
747 of the association through the date of turnover. The records
748 shall be audited by an independent certified public accountant
749 for the period from the incorporation of the association or from
750 the period covered by the last audit, if an audit has been
751 performed for each fiscal year since incorporation. All
752 financial statements shall be prepared in accordance with
753 generally accepted accounting principles and shall be audited in
754 accordance with generally accepted auditing standards, as
755 prescribed by the Board of Accountancy, pursuant to chapter 473.
756 The certified public accountant performing the audit shall
757 examine to the extent necessary supporting documents and
758 records, including the cash disbursements and related paid
759 invoices to determine if expenditures were for association
760 purposes and the billings, cash receipts, and related records of
761 the association to determine that the developer was charged and
762 paid the proper amounts of assessments. This paragraph applies
763 to associations with a date of incorporation after December 31,
764 2006.

765 Section 16. Section 720.308, Florida Statutes, is amended
766 to read:

767 720.308 Assessments and charges.--

768 (1) ASSESSMENTS.--For any community created after October
769 1, 1995, the governing documents must describe the manner in
770 which expenses are shared and specify the member's proportional
771 share thereof. Assessments levied pursuant to the annual budget
772 or special assessment must be in the member's proportional share

HB 839 CS

2006
CS

773 of expenses as described in the governing document, which share
774 may be different among classes of parcels based upon the state
775 of development thereof, levels of services received by the
776 applicable members, or other relevant factors. While the
777 developer is in control of the homeowners' association, it may
778 be excused from payment of its share of the operating expenses
779 and assessments related to its parcels for any period of time
780 for which the developer has, in the declaration, obligated
781 itself to pay any operating expenses incurred that exceed the
782 assessments receivable from other members and other income of
783 the association. This section does not apply to an association,
784 no matter when created, if the association is created in a
785 community that is included in an effective development-of-
786 regional-impact development order as of the effective date of
787 this act, together with any approved modifications thereto.

788 (2) GUARANTEES OF COMMON EXPENSES.--

789 (a) Establishment of a guarantee.--If a guarantee of the
790 assessments of parcel owners is not included in the purchase
791 contracts or declaration, any agreement establishing a guarantee
792 shall only be effective upon the approval of a majority of the
793 voting interests of the members other than the developer.

794 Approval shall be expressed at a meeting of the members voting
795 in person or by limited proxy or by agreement in writing without
796 a meeting if provided in the bylaws. Such guarantee shall meet
797 the requirements of this section.

798 (b) Guarantee period.--The period of time for the
799 guarantee shall be indicated by a specific beginning and ending
800 date or event.

HB 839 CS

2006
CS

801 1. The ending date or event shall be the same for all of
802 the members of an association, including members in different
803 phases of the development.

804 2. The guarantee may provide for different intervals of
805 time during a guarantee period with different dollar amounts for
806 each such interval.

807 3. The guarantee may provide that after the initial stated
808 period, the developer has an option to extend the guarantee for
809 one or more additional stated periods. The extension of a
810 guarantee is limited to extending the ending date or event;
811 therefore, the developer does not have the option of changing
812 the level of assessments guaranteed.

813 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
814 amount of the guarantee shall be an exact dollar amount for each
815 parcel identified in the declaration. Regardless of the stated
816 dollar amount of the guarantee, assessments charged to a member
817 shall not exceed the maximum obligation of the member based on
818 the total amount of the adopted budget and the member's
819 proportionate ownership share of the common elements.

820 (4) CASH FUNDING REQUIREMENTS DURING GUARANTEE.--The cash
821 payments required from the guarantor during the guarantee period
822 shall be determined as follows:

823 (a) If at any time during the guarantee period the funds
824 collected from member assessments at the guaranteed level and
825 other revenues collected by the association are not sufficient
826 to provide payment, on a timely basis, of all assessments,
827 including the full funding of the reserves unless properly

HB 839 CS

2006
CS

828 waived, the guarantor shall advance sufficient cash to the
829 association at the time such payments are due.

830 (b) Expenses incurred in the production of nonassessment
831 revenues, not in excess of the nonassessment revenues, shall not
832 be included in the assessments. If the expenses attributable to
833 nonassessment revenues exceed nonassessment revenues, only the
834 excess expenses must be funded by the guarantor. Interest earned
835 on the investment of association funds may be used to pay the
836 income tax expense incurred as a result of the investment; such
837 expense shall not be charged to the guarantor; and the net
838 investment income shall be retained by the association. Each
839 such nonassessment-revenue-generating activity shall be
840 considered separately. Any portion of the parcel assessment that
841 is budgeted for designated capital contributions of the
842 association shall not be used to pay operating expenses.

843 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
844 guarantor's total financial obligation to the association at the
845 end of the guarantee period shall be determined on the accrual
846 basis using the following formula: the guarantor shall pay any
847 deficits that exceed the guaranteed amount, less the total
848 regular periodic assessments earned by the association from the
849 members other than the guarantor during the guarantee period
850 regardless of whether the actual level charged was less than the
851 maximum guaranteed amount.

852 (6) EXPENSES.--Expenses incurred in the production of
853 nonassessment revenues, not in excess of the nonassessment
854 revenues, shall not be included in the operating expenses. If
855 the expenses attributable to nonassessment revenues exceed

HB 839 CS

2006
CS

856 nonassessment revenues, only the excess expenses must be funded
857 by the guarantor. Interest earned on the investment of
858 association funds may be used to pay the income tax expense
859 incurred as a result of the investment; such expense shall not
860 be charged to the guarantor; and the net investment income shall
861 be retained by the association. Each such nonassessment-revenue-
862 generating activity shall be considered separately. Any portion
863 of the parcel assessment that is budgeted for designated capital
864 contributions of the association shall not be used to pay
865 operating expenses.

866 Section 17. Section 720.311, Florida Statutes, is amended
867 to read:

868 720.311 Dispute resolution.--

869 (1) The Legislature finds that alternative dispute
870 resolution has made progress in reducing court dockets and
871 trials and in offering a more efficient, cost-effective option
872 to litigation. The filing of any petition for ~~mediation or~~
873 arbitration or the serving of an offer for presuit mediation as
874 provided for in this section shall toll the applicable statute
875 of limitations. Any recall dispute filed with the department
876 pursuant to s. 720.303(10) shall be conducted by the department
877 in accordance with the provisions of ss. 718.112(2)(j) and
878 718.1255 and the rules adopted by the division. In addition, the
879 department shall conduct mandatory binding arbitration of
880 election disputes between a member and an association pursuant
881 to s. 718.1255 and rules adopted by the division. Neither
882 election disputes nor recall disputes are eligible for presuit
883 mediation; these disputes shall be arbitrated by the department.

Page 32 of 45

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0839-03-c3

HB 839 CS

2006
CS

884 At the conclusion of the proceeding, the department shall charge
885 the parties a fee in an amount adequate to cover all costs and
886 expenses incurred by the department in conducting the
887 proceeding. Initially, the petitioner shall remit a filing fee
888 of at least \$200 to the department. The fees paid to the
889 department shall become a recoverable cost in the arbitration
890 proceeding, and the prevailing party in an arbitration
891 proceeding shall recover its reasonable costs and attorney's
892 fees in an amount found reasonable by the arbitrator. The
893 department shall adopt rules to effectuate the purposes of this
894 section.

895 (2) (a) Disputes between an association and a parcel owner
896 regarding use of or changes to the parcel or the common areas
897 and other covenant enforcement disputes, disputes regarding
898 amendments to the association documents, disputes regarding
899 meetings of the board and committees appointed by the board,
900 membership meetings not including election meetings, and access
901 to the official records of the association shall be the subject
902 of an offer filed with the department for presuit mandatory
903 mediation served by an aggrieved party before the dispute is
904 filed in court. Presuit mediation proceedings must be conducted
905 in accordance with the applicable Florida Rules of Civil
906 Procedure, and these proceedings are privileged and confidential
907 to the same extent as court-ordered mediation. Disputes subject
908 to presuit mediation under this section shall not include the
909 collection of any assessment, fine, or other financial
910 obligation, including attorney's fees and costs, claimed to be
911 due or any action to enforce a prior mediation settlement

912 agreement between the parties. Also, in any dispute subject to
 913 presuit mediation under this section where emergency relief is
 914 required, a motion for temporary injunctive relief may be filed
 915 with the court without first complying with the presuit
 916 mediation requirements of this section. After any issues
 917 regarding emergency or temporary relief are resolved, the court
 918 may either refer the parties to a mediation program administered
 919 by the courts or require mediation under this section. An
 920 arbitrator or judge may not consider any information or evidence
 921 arising from the presuit mediation proceeding except in a
 922 proceeding to impose sanctions for failure to attend a presuit
 923 mediation session or with the parties' agreement in a proceeding
 924 seeking to enforce the agreement. Persons who are not parties to
 925 the dispute may not attend the presuit mediation conference
 926 without the consent of all parties, except for counsel for the
 927 parties and a corporate representative designated by the
 928 association. When mediation is attended by a quorum of the
 929 board, such mediation is not a board meeting for purposes of
 930 notice and participation set forth in s. 720.303. An aggrieved
 931 party shall serve on the responding party a written offer to
 932 participate in presuit mediation in substantially the following
 933 form:

934
 935 STATUTORY OFFER TO PARTICIPATE IN PRESUIT MEDIATION
 936

937 The alleged aggrieved party, _____, hereby
 938 offers to _____, as the responding party,
 939 to enter into presuit mediation in connection with the

940 following dispute, which by statute is of a type that
 941 is subject to presuit mediation:

942
 943 (List specific nature of the dispute or disputes to be
 944 mediated and the authority supporting a finding of a
 945 violation as to each dispute.)

946
 947 Pursuant to section 720.311, Florida Statutes, this
 948 offer to resolve the dispute through presuit mediation
 949 is required before a lawsuit can be filed concerning
 950 the dispute. Pursuant to the statute, the aggrieved
 951 party is hereby offering to engage in presuit
 952 mediation with a neutral third-party mediator in order
 953 to attempt to resolve this dispute without court
 954 action, and the aggrieved party demands that you
 955 likewise agree to this process. If you fail to agree
 956 to presuit mediation, or if you agree and later fail
 957 to follow through with your agreement to mediate, suit
 958 may be brought against you without further warning.

959
 960 The process of mediation involves a supervised
 961 negotiation process in which a trained, neutral third-
 962 party mediator meets with both parties and assists
 963 them in exploring possible opportunities for resolving
 964 part or all of the dispute. The mediation process is a
 965 voluntary one. By agreeing to participate in presuit
 966 mediation, you are not bound in any way to change your
 967 position or to enter into any type of agreement.

HB 839 CS

2006
CS

968 Furthermore, the mediator has no authority to make any
969 decisions in this matter or to determine who is right
970 or wrong and merely acts as a facilitator to ensure
971 that each party understands the position of the other
972 party and that all reasonable settlement options are
973 fully explored. All mediation communications are
974 confidential under the Mediation Confidentiality and
975 Privilege Act pursuant to sections 44.401-44.406,
976 Florida Statutes, and a mediation participant may not
977 disclose a mediation communication to a person other
978 than a mediation participant or a participant's
979 counsel.

980
981 If an agreement is reached, it shall be reduced to
982 writing and becomes a binding and enforceable
983 commitment of the parties. A resolution of one or more
984 disputes in this fashion avoids the need to litigate
985 these issues in court. The failure to reach an
986 agreement, or the failure of a party to participate in
987 the process, results in the mediator's declaring an
988 impasse in the mediation, after which the aggrieved
989 party may proceed to court on all outstanding,
990 unsettled disputes.

991
992 The aggrieved party has selected and hereby lists
993 three certified mediators who we believe to be neutral
994 and qualified to mediate the dispute. You have the
995 right to select any one of these mediators. The fact

996 that one party may be familiar with one or more of the
 997 listed mediators does not mean that the mediator
 998 cannot act as a neutral and impartial facilitator. Any
 999 mediator who cannot act in this capacity ethically
 1000 must decline to accept engagement. The mediators that
 1001 we suggest, and their current hourly rates, are as
 1002 follows:

1003
 1004 (List the names, addresses, telephone numbers, and
 1005 hourly rates of the mediators. Other pertinent
 1006 information about the background of the mediators may
 1007 be included as an attachment.)

1008
 1009 You may contact the offices of these mediators to
 1010 confirm that the listed mediators will be neutral and
 1011 will not show any favoritism toward either party. The
 1012 names of certified mediators may be found through the
 1013 office of the clerk of the circuit court for this
 1014 circuit.

1015
 1016 If you agree to participate in the presuit mediation
 1017 process, the statute requires that each party is to
 1018 pay one-half of the costs and fees involved in the
 1019 presuit mediation process unless otherwise agreed by
 1020 all parties. An average mediation may require 3 to 4
 1021 hours of the mediator's time, including some
 1022 preparation time, and each party would need to pay
 1023 one-half of the mediator's fees as well as his or her

HB 839 CS

2006
CS

1024 own attorney's fees if he or she chooses to employ an
1025 attorney in connection with the mediation. However,
1026 use of an attorney is not required and is at the
1027 option of each party. The mediator may require the
1028 advance payment of some or all of the anticipated
1029 fees. The aggrieved party hereby agrees to pay or
1030 prepay one-half of the mediator's estimated fees and
1031 to forward this amount or such other reasonable
1032 advance deposits as the mediator may require for this
1033 purpose. Any funds deposited will be returned to you
1034 if these are in excess of your share of the fees
1035 incurred.

1036
1037 If you agree to participate in presuit mediation in
1038 order to attempt to resolve the dispute and thereby
1039 avoid further legal action, please sign below and
1040 clearly indicate which mediator is acceptable to you.
1041 We will then ask the mediator to schedule a mutually
1042 convenient time and place for the mediation conference
1043 to be held. The mediation conference must be held
1044 within 90 days after the date of this letter unless
1045 extended by mutual written agreement. In the event
1046 that you fail to respond within 20 days after the date
1047 of this letter, or if you fail to agree to at least
1048 one of the mediators that we have suggested and to pay
1049 or prepay to the mediator one-half of the costs
1050 involved, the aggrieved party will be authorized to
1051 proceed with the filing of a lawsuit against you

Page 38 of 45

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0839-03-c3

HB 839 CS

2006
CS

1052 | without further notice and may seek an award of
 1053 | attorney's fees or costs incurred in attempting to
 1054 | obtain mediation.

1055 |
 1056 | Should you wish, you may also elect to waive presuit
 1057 | mediation so that this matter may proceed directly to
 1058 | court.

1059 |
 1060 | Therefore, please give this matter your immediate
 1061 | attention. By law, your response must be mailed by
 1062 | certified mail, return receipt requested, with an
 1063 | additional copy being sent by regular first-class mail
 1064 | to the address shown on this offer.

1065 |
 1066 | _____
 1067 | _____

1068 |
 1069 | RESPONDING PARTY: CHOOSE ONLY ONE OF THE TWO OPTIONS
 1070 | BELOW. YOUR SIGNATURE INDICATES YOUR AGREEMENT TO THAT
 1071 | CHOICE.

1072 |
 1073 | AGREEMENT TO MEDIATE

1074 |
 1075 | The undersigned hereby agrees to participate in
 1076 | presuit mediation and agrees to the following mediator
 1077 | or mediators as acceptable to mediate this dispute:

1078 |
 1079 | (List acceptable mediator or mediators.)

1080
1081
1082
1083
1084
1085
1086
1087
1088
1089
1090
1091
1092
1093
1094
1095
1096
1097
1098
1099
1100
1101
1102
1103
1104
1105
1106
1107

I/we further agree to pay or prepay one-half of the mediator's fees and to forward such advance deposits as the mediator may require for this purpose.

Signature of responding party #1

Signature of responding party #2 (if applicable) (if property is owned by more than one person, all owners must sign)

WAIVER OF MEDIATION

The undersigned hereby waives the right to participate in presuit mediation of the dispute listed above and agrees to allow the aggrieved party to proceed in court on such matters.

Signature of responding party #1

Signature of responding party #2 (if applicable) (if property is owned by more than one person, all owners must sign)

HB 839 CS

2006
CS

1108 (b) Service of the statutory offer to participate in
1109 presuit mediation shall be effected by sending a letter in
1110 substantial conformity with the above form by certified mail,
1111 return receipt requested, with an additional copy being sent by
1112 regular first-class mail, to the address of the responding party
1113 as it last appears on the books and records of the association.
1114 The responding party shall have 20 days from the date of the
1115 mailing of the statutory offer to serve a response to the
1116 aggrieved party in writing. The response shall be served by
1117 certified mail, return receipt requested, with an additional
1118 copy being sent by regular first-class mail, to the address
1119 shown on the statutory offer. In the alternative, the responding
1120 party may waive mediation in writing. Notwithstanding the
1121 foregoing, once the parties have agreed on a mediator, the
1122 mediator may reschedule the mediation for a date and time
1123 mutually convenient to the parties. ~~The department shall conduct~~
1124 ~~the proceedings through the use of department mediators or refer~~
1125 ~~the disputes to private mediators who have been duly certified~~
1126 ~~by the department as provided in paragraph (c).~~ The parties
1127 shall share the costs of presuit mediation equally, including
1128 the fee charged by the mediator, if any, unless the parties
1129 agree otherwise, and the mediator may require advance payment of
1130 its reasonable fees and costs. The failure of any party to
1131 respond to a demand or response, to agree upon a mediator, to
1132 make payment of fees and costs within the time established by
1133 the mediator, or to appear for a scheduled mediation session
1134 shall operate as an impasse in the presuit mediation by such
1135 party, entitling the other party to proceed in court and to seek

HB 839 CS

2006
CS

1136 | an award of the costs and fees associated with the mediation.
1137 | Additionally, if any presuit mediation session cannot be
1138 | scheduled and conducted within 90 days after the offer to
1139 | participate in mediation was filed, an impasse shall be deemed
1140 | to have occurred unless both parties agree to extend this
1141 | deadline. ~~If a department mediator is used, the department may~~
1142 | ~~charge such fee as is necessary to pay expenses of the~~
1143 | ~~mediation, including, but not limited to, the salary and~~
1144 | ~~benefits of the mediator and any travel expenses incurred. The~~
1145 | ~~petitioner shall initially file with the department upon filing~~
1146 | ~~the disputes, a filing fee of \$200, which shall be used to~~
1147 | ~~defray the costs of the mediation. At the conclusion of the~~
1148 | ~~mediation, the department shall charge to the parties, to be~~
1149 | ~~shared equally unless otherwise agreed by the parties, such~~
1150 | ~~further fees as are necessary to fully reimburse the department~~
1151 | ~~for all expenses incurred in the mediation.~~

1152 | (c) ~~(b)~~ If presuit mediation as described in paragraph (a)
1153 | is not successful in resolving all issues between the parties,
1154 | the parties may file the unresolved dispute in a court of
1155 | competent jurisdiction or elect to enter into binding or
1156 | nonbinding arbitration pursuant to the procedures set forth in
1157 | s. 718.1255 and rules adopted by the division, with the
1158 | arbitration proceeding to be conducted by a department
1159 | arbitrator or by a private arbitrator certified by the
1160 | department. If all parties do not agree to arbitration
1161 | proceedings following an unsuccessful presuit mediation, any
1162 | party may file the dispute in court. A final order resulting
1163 | from nonbinding arbitration is final and enforceable in the

HB 839 CS

2006
CS

1164 courts if a complaint for trial de novo is not filed in a court
1165 of competent jurisdiction within 30 days after entry of the
1166 order. As to any issue or dispute that is not resolved at
1167 presuit mediation, and as to any issue that is settled at
1168 presuit mediation but is thereafter subject to an action seeking
1169 enforcement of the mediation settlement, the prevailing party in
1170 any subsequent arbitration or litigation proceeding shall be
1171 entitled to seek recovery of all costs and attorney's fees
1172 incurred in the presuit mediation process.

1173 ~~(d)(e) The department shall develop a certification and~~
1174 ~~training program for private mediators and private arbitrators~~
1175 ~~which shall emphasize experience and expertise in the area of~~
1176 ~~the operation of community associations. A mediator or~~
1177 ~~arbitrator shall be certified to conduct mediation or~~
1178 ~~arbitration under this section by the department only if he or~~
1179 ~~she has been certified as a circuit court civil mediator or~~
1180 ~~arbitrator, respectively, pursuant to the requirements~~
1181 ~~established attended at least 20 hours of training in mediation~~
1182 ~~or arbitration, as appropriate, and only if the applicant has~~
1183 ~~mediated or arbitrated at least 10 disputes involving community~~
1184 ~~associations within 5 years prior to the date of the~~
1185 ~~application, or has mediated or arbitrated 10 disputes in any~~
1186 ~~area within 5 years prior to the date of application and has~~
1187 ~~completed 20 hours of training in community association~~
1188 ~~disputes. In order to be certified by the department, any~~
1189 ~~mediator must also be certified by the Florida Supreme Court.~~
1190 ~~The department may conduct the training and certification~~
1191 ~~program within the department or may contract with an outside~~

HB 839 CS

2006
CS

1192 ~~vendor to perform the training or certification. The expenses of~~
1193 ~~operating the training and certification and training program~~
1194 ~~shall be paid by the moneys and filing fees generated by the~~
1195 ~~arbitration of recall and election disputes and by the mediation~~
1196 ~~of those disputes referred to in this subsection and by the~~
1197 ~~training fees.~~

1198 (e)~~(d)~~ The presuit mediation procedures provided by this
1199 subsection may be used by a Florida corporation responsible for
1200 the operation of a community in which the voting members are
1201 parcel owners or their representatives, in which membership in
1202 the corporation is not a mandatory condition of parcel
1203 ownership, or which is not authorized to impose an assessment
1204 that may become a lien on the parcel.

1205 ~~(3) The department shall develop an education program to~~
1206 ~~assist homeowners, associations, board members, and managers in~~
1207 ~~understanding and increasing awareness of the operation of~~
1208 ~~homeowners' associations pursuant to this chapter and in~~
1209 ~~understanding the use of alternative dispute resolution~~
1210 ~~techniques in resolving disputes between parcel owners and~~
1211 ~~associations or between owners. Such education program may~~
1212 ~~include the development of pamphlets and other written~~
1213 ~~instructional guides, the holding of classes and meetings by~~
1214 ~~department employees or outside vendors, as the department~~
1215 ~~determines, and the creation and maintenance of a website~~
1216 ~~containing instructional materials. The expenses of operating~~
1217 ~~the education program shall be initially paid by the moneys and~~
1218 ~~filing fees generated by the arbitration of recall and election~~

HB 839 CS

2006
CS

1219 | ~~disputes and by the mediation of those disputes referred to in~~
1220 | ~~this subsection.~~

1221 | Section 18. Except as otherwise expressly provided in this
1222 | act, this act shall take effect July 1, 2006.